

BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

December 14, 2001

IN RE:)	
COMPLAINT OF CLAIRE SCHULER)	DOCKET NO. 00-00446
AGAINST UNITED CITIES GAS COMPANY)	

INITIAL DECISION AND ORDER OF HEARING OFFICER

This matter came before the Tennessee Regulatory Authority (the "Authority") upon the filing by Ms. Claire Schuler on May 31, 2000 of "a formal complaint against the United Cities Gas Company & to request a hearing" (hereinafter referred to as the "Formal Complaint"). On June 30, 2000, United Cities Gas Company ("United Cities") filed its response to Ms. Schuler's Formal Complaint. On July 31, 2000, Ms. Schuler filed a reply to United Cities' response, which included a sworn statement from Raphael Crater, a previous resident of the subject property.

At the August 29, 2000 Authority Conference, the Directors of the Authority voted unanimously to appoint General Counsel or his designee to act as Hearing Officer on the merits of this matter pursuant to Tenn. Code Ann. §§ 4-5-301 *et seq.* and 65-2-111, to make findings of fact and conclusions of law, and to render an initial decision and order. By *Notice of Hearing* issued September 12, 2000, a Hearing on the merits was scheduled for September 27, 2000.

The Issue and Requested Relief

Ms. Schuler's Formal Complaint, as clarified at the Hearing, alleges that United Cities, during numerous visits to the subject property, failed to discover gas leaking from the base of a rusted, inoperable gas grill located in the back yard of her residence. Ms. Schuller contends that because United Cities failed to discover this leak, her metered usage was twice as much as her actual gas consumption. Therefore, Ms. Schuler has requested a refund or credit of half of the amount she has been billed since becoming a United Cities customer in November 1997.

The Hearing

On September 27, 2000, this matter was heard in the Authority's Hearing Room, with Ms. Claire Schuler *pro se* and Mark Thessin, Esq. representing United Cities. The Consumer Advocate Division of the Office of the Attorney General monitored the proceeding but did not petition to intervene. There were two witnesses at the Hearing; Ms. Claire Schuler testified on her own behalf, and Mr. Jay Murray, United Cities' local operations supervisor, testified for the utility. At the close of the Hearing, the Hearing Officer directed United Cities to file, as a late-filed exhibit, gas bills from August 1990 to the present for the subject property at 1007 Old Lascassas Pike. This late-filed exhibit was received by the Authority on October 5, 2000. The Hearing Officer set two weeks from the conclusion of the Hearing for the filing of "post-hearing briefs", so as to allow Ms. Schuler the opportunity both to respond to this late-filed exhibit and otherwise supplement her case. United Cities filed its brief on October 11, 2000; however, Ms. Schuler did not file anything further in this matter.

Findings of Fact

Through Ms. Schuler's and Mr. Murray's testimony, notwithstanding certain credibility, relevancy and evidentiary issues to which there were no objections, the following uncontroverted facts and events were established by the parties and are found to be relevant and material by the Hearing Officer. Ms. Schuler became a United Cities customer on November 3, 1997,¹ when she began a month-to-month tenancy at 1007 Old Lascassas Pike, Murfreesboro, Tennessee (the "subject property").² In January 1998, Ms. Schuler came to the United Cities' office in Murfreesboro and reported a high bill complaint to Mr. Murray.³ Because her gas bill appeared to Mr. Murray to be extremely high, he arranged to come to the subject property the following week and conduct a "high bill complaint" investigation on her system.⁴

Mr. Murray testified that during his visit the next week, he performed several tests and other procedures, in the presence of Ms. Schuler, to analyze her high bill complaint. The first test was to "spot the meter" to make sure that there were no leaks in the system. This entailed clocking the meter, to verify that the meter was working accurately, and reading the meter, to make sure the meter reader read the meter correctly. Other procedures included an analysis of the house, particularly its size and insulation, and whether its gas appliances were working properly.⁵

During this January 1998 visit pursuant to the first high bill complaint, Mr. Murray found that the gas water heater was leaking hot water, which may have

¹ Transcript of Proceedings, September 27, 2000 (hereinafter "Transcript"), p. 12.

² Transcript, p. 46.

³ Transcript, pp. 51, 62.

⁴ Transcript, p. 52.

⁵ Transcript, p. 52.

contributed to some, but not all, of the high gas usage.⁶ Mr. Murray proceeded to spot test the meter, which necessitated shutting off all gas appliances. Ms. Schuler was only aware of the gas water heater and a gas furnace,⁷ which Mr. Murray shut down.⁸ After ten minutes, there “was no movement of the quarter foot hand”⁹ which demonstrated to Mr. Murray that the system was not leaking at that time. Ms. Schuler remembered being outside with Mr. Murray, but could not specifically remember the spot test.¹⁰ Mr. Murray then performed an accuracy test on the meter by turning on the furnace to determine whether it was burning the proper number of BTUs. After explaining the process to Ms. Schuler, he “clocked it” and verified that the BTUs were within a range that he was comfortable with, and Mr. Murray concluded that as of January 1998, “there was no leaks on that system”.¹¹

The next event testified to at some length by both Ms. Schuler and Mr. Murray related to an estimated bill for November 1999. The meter reader could not read the meter due to the presence of Ms. Schuler’s dog, so the bill was estimated, which turned out to be an over-reading.¹² To compensate for the over-reading, Ms. Schuler received a zero usage on the next month’s (December’s) bill. When the January 2000 bill appeared excessive to Ms. Schuler, she called United Cities’ call center to complain, not about a leak, but about the high bill. In January 2000, Mr. Murray accompanied the meter reader to the subject property, discussed the situation relative to the dog, the meter reader and

⁶ Transcript, pp. 52, 63.

⁷ Transcript, p. 47.

⁸ Transcript, p. 53.

⁹ Transcript, p. 53.

¹⁰ Transcript, p. 84.

¹¹ Transcript, p. 54.

¹² Transcript, p. 56.

the estimated bill with Ms. Schuler, and again verified that the meter reading of usage was correct.¹³ There was still no discussion about either the gas grill or a gas leak.

Ms. Schuler testified that sometime between the end of February and the middle of March 2000, she and two friends “were playing with the dogs in the back yard. It was a chilly day, and we were over by where a gas grill used to stand. The only thing remaining of it was a rusted post that was sticking out of the ground. When we moved in, the top of the grill was falling off, and so I lifted it off and threw it away because I was afraid that if the dogs ran past it that they would cut themselves because it was rusted.”¹⁴

Ms. Schuler testified that her friend smelled gas, and they traced the smell to the base of the gas grill, where she smelled gas for the first time.¹⁵ Ms. Schuler then testified that she called United Cities “about a week later, because I’ve got a really busy lifestyle” and called the TRA immediately after that.¹⁶

Both Ms. Schuler and Mr. Murray testified that on March 30, 2000, a service technician from United Cities (who is also referred to as a “duty man”) responded to an after-hours **leak complaint**. Mr. Murray stated that first the service technician shut the meter off, clocked it and found “that there was movement on the meter when he turned it back on to spot test it”,¹⁷ which was evidence of a gas leak. After the service technician was shown the rusted 2”-3” post of the grill base by Ms. Schuler, the service technician discovered, slightly underground, the crimped end of a copper gas line (approximately three-eighths inch (3/8”) inside diameter)¹⁸ leaking gas equivalent to a burning pilot

¹³ Transcript, pp. 13-14, 56-57.

¹⁴ Transcript, p. 16.

¹⁵ Transcript, pp. 16-17.

¹⁶ Transcript, p. 17 (*see also* pp. 100-104).

¹⁷ Transcript, p. 59.

¹⁸ Transcript, pp. 77-78, 102.

light.¹⁹ After shutting off the gas at the meter, the service technician traced this gas line to the side of the house, where after some effort, he cut, plugged and sealed the gas line.²⁰

Both witnesses agreed on the general physical description of the residence where service of gas is provided. The subject property is a two-story frame house²¹ built between 1920 and 1930,²² is approximately 2000-2500 square feet in size,²³ reasonably maintained but very poorly insulated.²⁴ Mr. Murray testified “that it wasn’t insulated in the walls. So I don’t -- I don’t think it was well insulated at all.”²⁵ Ms. Schuler testified that she “plasticed” [sic] the windows, “put new seals in every crevice we could find” and “stuffed all of the baseboards in the house.”²⁶

Although Ms. Schuler referred to it as an apartment, the subject property is in fact a house where the upstairs and downstairs are treated as separate rental units with the potential of several occupants. Ms. Schuler testified that due to leaks in the roof, floor damage and/or other structural problems, certain rooms were not useable. Therefore, she closed them off from use, sometimes relying on a “makeshift draft dodger thing” to seal under the doors, “kept a very thick piece of cloth to divide the rooms” and also hung a blanket in the doorways to divide heated areas from unheated areas.²⁷

Conclusions of Law

Both Ms. Schuler and Mr. Murray testified about a number of items, but particularly focused on a gas bill that United Cities estimated, and whether that estimated

¹⁹ Transcript, pp. 60, 84.

²⁰ Transcript, pp. 18, 59-61, 84-85, 100-103.

²¹ Transcript, p. 43.

²² Transcript, p. 45.

²³ Transcript, pp. 55, 68-69.

²⁴ Transcript, p. 69.

²⁵ Transcript, p. 69.

²⁶ Transcript, p. 12.

²⁷ Transcript, pp. 43-45.

bill resulted from the presence of Ms. Schuler's dog. Although both parties dealt with these items at length, most of their contentions were simply not relevant to the issue at hand. As stated in the Formal Complaint, clarified at the Hearing, and accepted by both parties, the sole issue in this matter is to what extent, if at all, United Cities is responsible for a gas leak to a gas grill located in the back yard of the subject property.²⁸ Whether a dog prevents a meter reader from reading the meter, which then necessitates an estimated bill that may or may not be "too high" for that particular month, has nothing to do with a gas leak. Upon an actual reading the following month, the difference between the estimated bill and the actual consumption would be "trued-up", and the consumer would pay no more nor no less over that two month period than was legitimately due to the utility. Other than for chronological purposes, any testimony relative to either the estimated bill or the dog does not demonstrate anything about the subject gas leak; therefore, the Hearing Officer finds any such evidence irrelevant to this proceeding.

As for the arguments of the parties, Ms. Schuler began first by arguing that her gas consumption was extremely conservative, that she was very frugal with the use of the furnace and often times relied solely on electric heaters. As such, she maintained that a significant part of her metered usage could only be due to a gas leak. United Cities maintained that the lack of insulation in this type of structure could account for usage beyond what may otherwise be expected. On behalf of United Cities, Mr. Murray stated that "if a house is not well insulated during the winter months, you're just pumping cold air back into the house when you're trying to heat it."²⁹

²⁸ Transcript, pp. 29-32.

²⁹ Transcript, p. 69.

Considering the size of the subject property, Mr. Murray testified that “it was roughly using what it would have used in the wintertime.”³⁰ Not only was this contention not refuted by Ms. Schuler, United Cities late-filed exhibit demonstrates that on average, Ms. Schuler consumed significantly less gas than any previous resident of the subject property since 1990. In addition to the lack of insulation, there was a gas water heater that had a hot water leak, and this may also have contributed to usage greater than Ms. Schuler’s conservative expectations.

Ms. Schuler next argued that United Cities installed the gas grill, and therefore any leak should be its problem. Mr. Murray testified that United Cities does not have records that go back to when the grill was installed, and United Cities was not the only one who could have installed it; in fact, it “could be anybody”.³¹ Ms Schuler testified that “I have a very firm belief even though I can’t prove it because they don’t have records of it, that they installed the gas grill, and it’s my assumption that if they installed the gas grill and I thought that there was a gas leak, then they should be responsible for it being that they installed it.”³²

At the Hearing as well as in its post-hearing brief, United Cities responded that based on its tariff as well as TRA rules, all leaks and the upkeep of gas piping located on the customer’s side of the meter are the responsibility of that customer.³³ United Cities’ Tariff, T.R.A. No. 1, Original Sheet No. 61, states in pertinent part:

- 6.1 Responsibility for consumption; security of facilities
 - (a) Loss of gas leakage from Customer’s installation shall be considered to be consumption by the Customer.

³⁰ Transcript, p. 69.

³¹ Transcript, p. 68.

³² Transcript, pp. 48-49.

³³ Transcript, p. 24.

Therefore, according to United Cities, regardless of who originally installed the gas grill, gas consumption due to a leak in its gas line is solely Ms. Schuler's responsibility. The Hearing Officer reaches this same conclusion.

Finally, Ms. Schuler argued that the bill she received immediately following the sealing of the grill's gas line was fifty percent (50%) lower than her previous bills, which she believed should prove the amount of gas lost to the leak.³⁴ As a result of this figure, Ms. Schuler feels that by extension she is not responsible for fifty percent (50%) of all gas consumption attributed to her since November 1997. United Cities countered that there couldn't have been a significant gas leak since that time, because as shown in its late-filed exhibits, Ms. Schuler's summer bills were extremely low. The Hearing Officer determines that gas consumption due to this type of a leak would be essentially constant and would not fluctuate between winter and summer. Therefore, Ms. Schuler's low summer gas meter readings negate the possibility of a significant leak over any prolonged period of time.

In its post-hearing brief, United Cities argued that it "did everything in compliance with the Company's operation and maintenance procedures and all pipeline safety requirements."³⁵ United Cities brief goes on to declare that the following "fact" is "important to recall in determining that the Company's handling of Ms. Schuler's complaint was proper and within the Company's tariff and the TRA's rules":

Until March 30th Ms. Schuler never mentioned that there was a possibility of a leak. This is shown in her informal complaint filed on February 24, 2000 where this concern is not expressed and Ms. Schuler's admission at the hearing that March 30th was the first time she complained of a leak.³⁶

³⁴ Transcript, p. 19.

³⁵ United Cities Post-Hearing Brief, October 11, 2000, p. 2.

³⁶ United Cities Post-Hearing Brief, October 11, 2000, p. 2.

Although Ms. Schuler has not responded to the brief, United Cities' own documents contradict this purported "fact". One need only examine page 8 of United Cities' collective Exhibit No. 1, which is a copy of "Service Order Number: 5004928320". At the top, this document plainly states: "Type: **LEAK EMERGENCY-LEAK**"; it further states next to "Date Created: 15-MAR-2000" and under "Notes: Cust. Request that we do a leak invest per TRA". Contrary to United Cities' assertion, this evidence suggests that the leak was reported before March 30, 2000, and at least as early as March 15, 2000.

As shown in the record of an extended interchange between Ms. Schuler and Mr. Murray, neither party ever made it clear why a leak test was not done prior to March 30, 2000.³⁷ Unfortunately, neither Mr. Rafael Crater, a previous resident of the subject property who was visiting at the time, nor the United Cities' service technician who responded pursuant to the March 15, 2000 service order and met with Mr. Crater, testified at the Hearing. Further, neither Mr. Crater's affidavit nor the hearsay evidence offered on behalf of the service technician resolved the inconsistencies.

However, in responding to one of Ms. Schuler's questions, Mr. Murray testified that the service technician "didn't do a leak test on it because he didn't have a leak investigation order to do. When Denise called me and told me this, I made the order up but the order never got to him to do. All he knew to do was to go out there and hand you the paperwork that you had asked for and do a high bill complaint."³⁸ Mr. Murray further stated that all the service technician "was out there to do is just to turn the gas off, check the spot on the meter to make sure that there was no leaks on the system, and he did [sic]

³⁷ Transcript, pp. 87-95.

³⁸ Transcript, p. 90.

didn't do that, and that was my fault for not getting that done.”³⁹ From this testimony, it is clear to the Hearing Officer that United Cities was responsible for the service technician receiving the order as a **high bill complaint** rather than a **leak order investigation**, and as a result, United Cities discovered the gas leak fifteen (15) days later than it should have.

In its post-hearing brief, United Cities argued that the gas leak was “very small”, as it had established at the Hearing that the leak was “about the size of a pilot light”.⁴⁰ This description was corroborated by Ms. Schuler three different times during the Hearing.⁴¹ When asked to describe how much metered usage a leak such as this would generally entail, Mr. Murray answered, “In a month’s time probably about two or three dollars.”⁴² Even though an expert witness from the TRA staff was available⁴³ to the parties to corroborate or refute that evidence, Ms. Schuler did not avail herself of any such expert testimony. Therefore, Mr. Murray’s contention relative to the value of the gas leak must be accepted as both uncontested and reasonable.

Determination of Hearing Officer

Due to the above findings and conclusions, the Hearing Officer determines that United Cities is not responsible for fifty percent (50%) of the metered gas usage as alleged by Ms. Schuler. The lack of insulation in the house as well as the “sealing off” between heat zones and unoccupied, unheated rooms due to the house’s structural

³⁹ Transcript, p. 93.

⁴⁰ Transcript, pp. 60, 84, 103.

⁴¹ Transcript, pp. 84, 101, 103.

⁴² Transcript, p. 70.

⁴³ Early in the Hearing, the Hearing Officer stated: “Ms. Jean Curran from our consumer services division and Mr. Earnest Burke from gas pipeline safety [division] are here [and] available to testify if called because they’ve had dealings - - I think they’ve been the direct TRA representatives with both parties, and they...are here and available. And we have Chinese walled our staff off from them and vice versa.” Transcript, pp. 25-26.

problems must contribute to what Ms. Schuler believes to be excessive usage. The leak to the gas grill, which both parties agreed was small, could not account for more than a small percentage of Ms. Schuler's metered usage, and certainly not fifty percent (50%).

Further, the responsibility for causing the leak can only be attributed to Ms. Schuler or her landlord. She removed the rusted grill as a precaution for her dogs, but did not discuss the problem or its consequences with either the agent or owner of the property.⁴⁴ Nor did she alert United Cities about the grill's existence or that she dismantled it. Finally, when her friend discovered the actual leak and she smelled gas for the first time, Ms. Schuler did not immediately inform United Cities due to her "really busy lifestyle." United Cities tariff clearly makes the loss of gas due to the grill's leak the responsibility of the customer. If Ms. Schuler has any recourse for such loss of gas, it is against her landlord as the owner of the malfunctioning gas grill.

United Cities, however, is not without some culpability. Public safety demands that a gas utility has a responsibility to its customers and the public at large to discover a reported leak and to reduce such a hazard. This is codified in TRA Rule 1220-4-5-.38 Protective Measures:

- (1) Each utility shall exercise reasonable care to reduce the hazards to which its employees, its customers, and the general public may be subjected.

Although Mr. Murray had nothing but good intentions in his service to Ms. Schuler, nevertheless United Cities permitted the leak to continue for fifteen (15) days longer than it should have if the gas utility had been exercising reasonable care. Therefore, by not discovering the gas leak on March 15, 2000, United Cities is found to be responsible for

⁴⁴ Transcript, pp. 46-47.

Ms. Schuler's gas consumption between and including March 15 and March 30, 2000, and as a consequence is directed to credit her account for fifty percent (50%) of her March 2000 gas bill.

IT IS THEREFORE ORDERED THAT:

1. Due to a preponderance of the evidence, United Cities Gas Company is not responsible for any of Ms. Claire Schuler's gas usage between November 3, 1997 and March 15, 2000 or between March 30, 2000 and September 27, 2000;

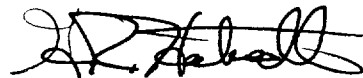
2. United Cities Gas Company shall credit Ms. Claire Schuler's account for fifty percent (50%) of her March 2000 gas bill;

3. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order;

4. If this Order is not appealed to the Tennessee Regulatory Authority within (15) days, this Order shall become final and shall be effective from the date of entry; and

5. Any party aggrieved by the decision of the Hearing Officer in this matter has the right to judicial review by filing a Petition for Review with the Tennessee Court of Appeals within sixty (60) days from the date of this Order.

Entered: 12-14-01



Gary R. Hotvedt, Hearing Officer

ATTEST:



K. David Waddell, Executive Secretary